



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 20]

नई दिल्ली, शनिवार, अगस्त 17, 1991/श्रावण 26, 1913

No. 20]

NEW DELHI, SATURDAY, AUGUST 17, 1991/SRAVANA 26, 1913

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रचा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएँ
Orders and Notifications Issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 22 जुलाई, 1991

आ. आ. 85—भारत निर्वाचन आयोग 1990
की निर्वाचन प्रती संख्या 3 में पंजाब और हरियाणा उच्च
न्यायालय, चण्डीगढ़ के तारीख 12 अप्रैल, 1991 वाले
आदेश को लोक प्रतिनिधित्व अधिनियम, 1951 [(1951
का 43) की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित
करता है।

(आदेश अंग्रेजी में छपा है)
[सं. 82/हरि. लो. स. / (3/90) 91]

ELECTION COMMISSION OF INDIA

New Delhi, the 22nd July, 1991

O.N. 85.—In pursuance of Section 106 of the
Representation of the People Act, 1951 (43 of 1951),
the Election Commission of India hereby publishes
the Order, dated the 12th April, 1991, of High Court
of Punjab and Haryana at Chandigarh in Election
Petition No. 3 of 1990.

IN THE HIGH COURT OF PUNJAB AND
HARYANA AT CHANDIGARH CIVIL MISC. SIDE
AMENDED ELECTION PETITION NO. 3 OF 1990

Shri Khurshid Ahmed, S/o Shri Kabir Ahmed,
814, Sector 21-A, Faridabad.

.....Petitioner.

VERSUS

Chaudhri Bhajan Lal, M.P., r/o Mandi Adampur,
Distt. Hissar, at present residing at 1, Race
Course Road, New Delhi.

.....Respondent.

Amended Petition Under Section 81 Read with
other various provisions of the representation of Peo-
ple Act, 1951, praying that :—

(i) That the election of Respondent (returned
candidate) be declared void on the grounds
mentioned in the petition.

(ii) The costs of the petitioner may be awarded in his favour.

(iii) Such other orders as may be deemed fit and proper in the circumstances of the case may also kindly be made by this Hon'ble Court. And for this Act of Kindness the Petitioner shall ever pray as in duty bound.

Dated the 12th April, 1991

PRESENT

THE HON'BLE MR. JUSTICE S. S. SODHI.

For the Petitioner : Nemo.

For the Respondents : Sh. J. K. Sibal Advocate,
ORDER

A.E.P. No. 3/90.

ORDER

S. S. SODHI, J.

Dismissed in default.

April 12, 1991.

Sd/-S. S. SODHI,
Judge.

[No. 82|HN-HP|(3)|90|91]

नई दिल्ली, 29 जुलाई, 1991

आ. आ. 86.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग 1984 की निर्वाचन याचिका सं. 4 में दिल्ली उच्च न्यायालय के आदेश दिनांक 26 अक्टूबर, 1984 को एतद्वारा प्रकाशित करना है।

(आदेश अंग्रेजी में छपा है।)

[सं 82/डॉ एल-सी एम (4/84/91)]

एम. आर. सरोनिवास मूर्ति, सचिव

New Delhi, the 29th July, 1991

O.N. 86.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Order, dated the 26th October, 1984 of the High Court of Delhi in Election Petition No. 4 of 1984.

[No. 82|DL-CS(4|84)|91]

IN THE HIGH COURT OF DELHI

Election Petition No. 4/84

Date of Decision October 26, 1984.

P.K. Chandra

... through Miss Deepa Bhusan, Advocate.

Versus

Laxmi Narayan

... through Mr. S.N. Sapra, Advocate.

Coram :—

The Hon'ble Mr. Justice J. D. JAIN.

The Hon'ble Mr. Justice,

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not
3. Whether their Lordships wish to see the fair copy of the Judgment ?

The undisputed facts leading to this election petition succinctly are that a seat in the Council of States (Rajya Sabha) fell vacant due to the retirement of Shri Khurshid Alam Khan on 15th April 1980. The vacancy, which was regular one for a full term of six years,

was to be filled up by calling upon the members of the Metropolitan Council of Delhi, which constituted the Electoral College, to elect a new member. However, that could not be done because the Metropolitan Council of Delhi had been dissolved in March 1980 and it was reconstituted only in February 1983 after elections to the same were held. In the meanwhile, another vacancy in the Council of States fell vacant on 2nd April 1982 due to the retirement of Shri Charanjit Chanaana on the expiration of his term in office. Since both these vacancies were regular vacancies where the members elected were to enjoy a full term of six years in office, the President issued two separate notifications under Section 12 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) on 1st November 1983 calling upon the members of the Metropolitan Council of Delhi to elect fresh members to fill

up those vacancies. Pursuant to the said notifications, election was held on 18th November 1983 and the respondent was declared elected to one of the said two seats while Shri Shameem Ahmed was declared elected to the other seat.

The petitioner, who was a member of the Electoral College, has challenged the election of the respondent primarily on the ground that Article 80(4) and (5) of the Constitution of India read with Section 27 (H) of the Act lay down that election to the seats allotted to any Union Territory in the Council of States shall be held in accordance with the system of proportional representation by means of a single transferable vote but the constitutional mandate of proportional representation was violated and contravened by holding election to both the aforesaid seats separately. His argument precisely is that the principle underlying the constitutional mandate of proportional representation is that the system of election so far as possible should be such as to allow each group in the Electoral College to elect members to the Council of States in proportion to their strength in the Electoral College. Hence, the said constitutional mandate could be fulfilled only by holding a joint election and not separate election for the two seats which were vacant at the time of the issue of notifications calling upon the members of the Electoral College to elect new members. It is further contended that had one notification instead of two separate notifications under Section 12 of the Act been issued and election held jointly for both the seats the Bhartiya Janata Party candidate, who had secured the next maximum votes viz 22 as against 33 votes obtained by Congress(I) Party candidate for each of the seats, would have been declared elected to at least one of the two seats but both the seats went to Congress(I) Party candidates because of the wrong method of election adopted by the Election Commission. It is further averred that on the publication of the aforesaid notifications under Section 12 a representation was made by the Bhartiya Janata Party to the Election Commission on the aforesaid lines but the same was finally rejected primarily on the ground that since the vacancies had arisen on different dates, separate elections could be held to fill those vacancies. The substance of the petitioner's grievance, therefore, is that by adopting a wrong method of election and giving a go-by to the concept of proportional representation, the majority party was enabled to bag both the seats.

The petition is resisted by the respondent, who contends that the two vacancies in the Council of States had occurred on two different dates and, therefore, elections to fill up those vacancies would have normally taken place at different times and the plea now sought to be put forth by the petitioner would not have been available to him. So the more co-incidence that both these vacancies remained unfilled and were available on 1st Nov. 1983 when the aforesaid notifications under Section 12 of the Act were issued by the President of India would be of no consequence and the Election Commission was perfectly justified in holding separate elections to both the seats. He has pointed out that the first vacancy which had occurred on 15th

April 1980 would have been filled up in the normal course soon thereafter but for the fact that the Metropolitan Council of Delhi had been dissolved earlier and the election thereto could not be held until February 1983. So, the petitioner cannot derive any advantage out of his fortuitous circumstance. The respondent has also pointed out that another Election Petition being No. 3/84 was filed by the defeated candidate Smt. Shakuntala Arya against him on identical grounds but the same was dismissed by Goswamy, J. vide his judgment dated 21st August 1984, the main judgment having been recorded in Election Petition No. 1 of 1984, Surendra Pal Ratawal v. Shamim Ahmed.

The learned counsel for the parties candidly conceded that the election petition filed earlier by Smt. Shakuntala Arya against the respondent was founded on the same very grounds on which the present election petition is based. Indeed, they are couched in identical words and the judgment of my learned brother Goswamy, J. fully covers the instant case too. His Lordship has, inter alia, observed that :

"It was also not disputed that in case of casual vacancies which have to be filled up in the manner laid down in section 147 of the Act, they have not to be filled up by a single bye election and separate election for each of such vacancies has to take place. In spite of that the election has to be held by the same system i.e. by proportional representation by means of single-transferable-vote. The system can, therefore, work even if one vacancy has to be filled."

In the present case it was a co-incidence that the vacancy which occurred in 1980 could not be filled in immediately because electoral college i.e. the Metropolitan Council stood dissolved.

... If the Metropolitan Council was in existence, the election to fill up that single seat would have been held in 1980 and by the same system and similar would have been the case for the vacancy which occurred in 1982."

His Lordship further observed :

"After given my careful consideration to the provisions of Article 80 of the Constitution and the relevant provisions of the Representation of People Act including section 12 of the Act, I am unable to find any express or even implied provision which prohibits the holding of two separate election for two separate vacancies. Neither the language of Article 80 nor any of the provisions of the Act or the Rules framed thereunder require that the filling of two different or separate vacancies should also be done by holding elections jointly and simultaneously. Election being a right of statutory right and statutory obligations and being created by the statute, there is no scope for deciding upon any other basis which would be called extraneous."

Consequently, the election petition was dismissed. I am in respectful agreement with the conclusion arrived at by my learned brother in the said election petition and I hold that the same would apply on all fours to the instant case. As a result, therefore, this election petition is hereby dismissed with costs. The costs are quantified at Rs. 1,000.

October 26, 1984.

JUDGE

[No. 82/DL-CS(4)/48/91]

BY ORDER

M. R. SRINEEVASA MURTHY, Secy.

नई दिल्ली, 29 जुलाई, 1991

आ. आ. 87.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1990 की निर्वाचन अर्जी सं. 6 में मध्य प्रदेश उच्च न्यायालय, जबलपुर के तारीख 15 अप्रैल, 1991 के आदेश को एतद्वारा प्रकाशित करता है।

(आदेश अंग्रेजी में छपा है।)

[सं. 82/म.प्र.सो.सं./6/90]

हरिन्दर हीरा, प्रधान सचिव

New Delhi, the 29th July, 1991

O.N. 87.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the order of the High Court of Madhya Pradesh at Jabalpur, dated 15th April, 1991 in Election Petition No. 6 of 1990.

IN THE HIGH COURT OF MADHYA PRADESH
JABALPUR

E.P. 6/90

Dated the 15th April, 1991

Amar Deo Vs. Mankuram Saudi

Shri Rakesh Jain—for the petitioner.

Shri Fakhruddin with Shri R. S. Tewari—for the respondent.

Counsel for the petitioner states that the petition has become infructuous because of the dissolution of the Lok Sabha.

The petition is dismissed as infructuous.

Security amount be refunded to the petitioner.

C.C. as per rules.

Sd/- FAKHRUDDIN, Judge

[No. 82-MP-HP/6/90]

By Order,

HARINDER HIRA, Principal Secy.